IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1177 OF 2005

Muhurat Ali Gubdar Ali ...Applicant

Versus

State of Maharashtra & Anr ...Respondents

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Ms. S.D. Khot i/b M/s. Halal & Co. Advocate for Applicant

Mr. S.V. Kotwal i/b Mr. M.K. Kocharekar, Advocate for Respondent No.2.

Mr. S.R. Shinde, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 9TH AUGUST, 2005

P. C.:-

1. Heard the learned advocate for the applicant i.e. original accused and the learned advocate for the respondent No.2 i.e. original complainant.

2. The applicant is facing prosecution in respect of proceedings relating to complaint No.445/S/2003 which is pending before the learned Additional Chief Metropolitan Magistrate, 24th Court, Borivali, Mumbai. The said proceedings is under Section 138 of Negotiable Instruments Act.

3. It is the case of the applicant that the notice

which was issued by the complainant was sent to wrong address i.e. the notice was sent to the address where the applicant/accused was not at all residing. In support of his defence the applicant examined himself as Defence witness No.1 on 16.6.2004. On the said date he produced xerox copies of the documents in respect of his contention that he was not residing at the address where the notice came to be issued. The said documents have been exhibited as Exh. "Y" collectively. However, on the said date the originals of the said documents were not produced. Thereafter, an application came to be preferred by the applicant on 8.9.2004 for recall of witness i.e. himself. The said application was preferred in order to produce the originals of the documents which were exhibited as Exh. "Y" collectively. The said application came to be rejected by order dated 15.10.2004 by the learned Magistrate. Being aggrieved thereby, this application has been preferred.

4. In the present case it is seen that it is the consistent stand of the applicant that the notice was issued by the complainant at the wrong address. In respect of this defence he examined himself as defence witness No.1 and he produced the xerox copies of the documents which show that he was residing at a different address than the address stated in the

notice. Unfortunately, on the date that he was examined i.e. on 16.6.2004 he did not produce the original copies of the documents and only produced the xerox copies of the documents. The said documents consist of MTNL Bill, Ration card, driving licence etc. On account of this in order to get the original documents on record, the applicant preferred an application on 8.9.2004 for recall of witness i.e. himself. It is seen that in the circumstances of the present case, the application was moved at the earliest. After the applicant was examined on 16.6.2004 the case was adjourned to 18.8.2004. On 18.8.2004 the complainant was not present so also the advocate for the applicant was absent. Hence, on that date no application was preferred. On the very next date i.e. on 19.8.2004 an application for recall of witness came to be preferred. Looking to the fact that on 16.6.2004 xerox copies of the documents were produced and taken on record, however, originals of the said documents were not produced, in my view, in the interest of justice one last opportunity should be given to the applicant to produce the originals of the documents which are exhibited as "Y" collectively.

5. I am informed that the matter has been adjourned to 30.8.2005. On 30.8.2005 the applicant is granted one last opportunity to bring original documents of

Exh. "Y" collectively on record. The learned advocate for the applicant also categorically states that the recall of witness i.e. the applicant will be limited only to bring the original documents of Exh."Y" collectively on record. In view of this statement, it is made clear that the recalling of the witness would be for the limited purpose of bringing the original documents of Exh."Y" collectively on record. It is further made clear that no further adjournment shall be granted to the applicant to bring the said documents on record. Thereafter the complainant be granted opportunity to cross-examine the witness i.e. applicant D.W.1. Needless to say that thereafter, statement of the accused under Section 313 of Cr.P.C. limited to the material which has come on record after recalling the applicant, be recorded. Thereafter, after hearing necessary parties the trial Court to dispose of the trial.

6. Application is disposed of.

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